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**Administration of justice at the United Nations**

# Administration of justice in the Secretariat

## Report of the Secretary-General

*Summary*

The present report is submitted in response to the request of the General Assembly, in its resolution 59/283, for the Secretary-General to present proposals to separate the functions of the Administrative Law Unit in order to avoid conflict of interest, through redeployment of resources, and to report to the Assembly thereon by the end of its fifty-ninth session, taking into account the following needs: (a) to ensure the necessary means to collect evidence; (b) to advise both the appellant and the respondent; (c) to ensure the uniform application of administrative decisions; (d) to ensure appropriate consultations with the Office of Human Resources Management and legal experts; and (e) to relay all necessary information to the Office of Human Resources Management.

The Secretary-General has analysed the current situation, including whether a conflict of interest exists and the need to take into account the requirements set out in resolution 59/283.

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# I. Introduction

1. The present report is submitted pursuant to a request by the General Assembly in its resolution 59/283 of 13 April 2005. In paragraph 29 of that resolution, the Assembly noted that the Administrative Law Unit had the multiple functions of administrative review, appeals, disciplinary matters and advisory services. In paragraph 30, the Assembly requested the Secretary-General to submit to the Assembly, by the end of its fifty-ninth session, proposals to separate the above-mentioned functions, through the redeployment of resources, in order to avoid conflicts of interest, taking into account the following needs:

(a) To ensure the necessary means to collect evidence;

(b) To advise both the appellant and the respondent;

(c) To ensure the uniform application of administrative decisions;

(d) To ensure appropriate consultations with the Office of Human Resources Management and legal experts;

(e) To relay all necessary information to the Office of Human Resources Management.

# II. Functions of the Administrative Law Unit

2. The functions of the Administrative Law Unit related to appeals include:

(a) On behalf of the Secretary-General, the review of administrative decisions upon the request of individual staff members who believe that their terms of appointment were not observed when those decisions were taken. Under staff rule 111.2 (a), this review constitutes the first step of the appeals process. The Unit reviews all requests to identify the issues and obtains the comments of the manager who has made the decision under review. The Unit also draws the attention of the office to the fact that, through this process, it can resolve potential cases before a formal appeals process is initiated. Whenever possible or useful, a formal review letter is prepared and sent to the staff member explaining why the administrative decision is being maintained or changed;

(b) Representation of the Secretary-General ("respondent") in proceedings before the Joint Appeals Board in New York after a staff member has submitted an appeal to the Board against the initial administrative decision if no formal review has been conducted or in response to the answer received after such review.[1] At that point in the process, the Unit prepares the respondent's reply, answers any questions that may be asked by the Board pertaining to the case and appears before the Board in the event that oral proceedings are scheduled. If a formal review letter is prepared before the appeal is filed, that letter may serve as the respondent's reply or may become an integral part of it;

(c) Representation of the respondent before the Board when a staff member requests suspension of action of an administrative decision;

(d) Advice to managers who consult the Unit on the proper application of human resources policies and rules in order to address, as early as possible, issues that might otherwise become formal appeals.

## III. Complementarity of functions related to appeals

3. The request of the General Assembly for proposals to separate the functions of the Administrative Law Unit appears to be based on the view that there is a conflict of interest when the same unit handles the request for administrative review, prepares the respondent's reply and represents the respondent in the same case. The Secretary-General does not share that view.

4. The Administrative Law Unit, while functionally assigned the execution of responsibilities related to appeal matters, is an integral part of the Office of Human Resources Management (OHRM) and, within that Office, of the Division for Organizational Development. It acts on behalf of the Administration at all times and at all stages in the appeal process. This role is made clear to all parties from the initiation of the appeals process. It is in that capacity that at the review stage, or even beforehand when difficult situations occur that might give rise to litigation if not properly addressed, the Unit explores the possibility of avoiding unnecessary litigation by working with its counterparts in OHRM, or with the executive and administrative offices concerned, with regard to decisions for which authority has been delegated. It is standard practice for staff of the Unit who are called upon to discuss a situation with an appellant or potential appellant and/or his or her counsel to remind their interlocutors that they represent the Administration. This is not mediation or arbitration where the mediator or arbitrator would act as a neutral third party. Informal resolution efforts are sometimes initiated by the Unit and sometimes by the staff member or the member's counsel, as is done in national judicial systems when opposing parties wish to explore the possibility of resolving a case outside the formal litigation process. If no mutually acceptable solution can be found, the staff member's right to proceed to formal litigation is unimpeded.

5. With respect to the needs identified by the General Assembly in resolution 59/283, the Secretary-General would make the following comments:

(a) *To ensure the necessary means to collect evidence*: the combination of responsibilities currently discharged by the Administrative Law Unit in matters related to the appeals process results in a significant economy of resources at the stage of establishing the facts and legal issues involved in a particular case. This stage is an absolute necessity, without which there can be no meaningful advice to managers, no reasonable review of the administrative decision and no complete reply from the respondent. From that perspective, it would appear that the present distribution of functions meets the need to ensure the necessary means to collect evidence better than if the facts have to be established in two separate offices, as would be the case if the review functions were to be separated from the others;

(b) *To advise both the appellant and the respondent*: as stated above, the Administrative Law Unit represents the respondent at all stages of the appeals process. The Panel of Counsel represents appellants during the process. The rules also allow staff members to be represented by counsel of their choice. There is therefore no conflict of interest on the part of the Unit under the current distribution of functions;

(c) (d) and (e) *To ensure the uniform application of administrative decisions, to ensure consultation with OHRM and legal experts and to relay all necessary information to OHRM*: As an integral part of OHRM, the Administrative Law Unit has immediate and direct access to all relevant officials and has a variety of internal

and efficient means to consult and to provide or receive information within that Office. Should the review functions be given to another office, a whole new system of communications would have to be put into place. In addition, since OHRM remains the central authority within the Secretariat for the interpretation and enforcement of the Staff Regulations and Rules, the ability of the Unit to consult easily within the Office helps to ensure the uniform application of administrative decisions.

## IV. Current capacity

6. Beyond the substantive aspects of the question as to whether the separation of the functions currently discharged by the Administrative Law Unit is necessary or desirable, the General Assembly specified in its request for proposals to separate these functions that this should be done through the redeployment of resources. The Secretary-General does not consider such a separation to be possible. Currently, the Unit has two Professional posts in the regular budget, one at the P-5 level for the Chief of Unit and another at the P-3 level. In order to deal with the number of requests for review/appeals and disciplinary cases emanating from peacekeeping missions, two P-4 posts are provided through the support account. The Chief of Unit supervises all of the work done in the Unit and performs other managerial functions as required, in addition to dealing with appeals and disciplinary cases. Given the limited number of budgeted posts and the workload, general temporary assistance has also been provided to the Unit. An additional P-3 post has been proposed in the context of the proposed programme budget for the biennium 2006-2007 in order to release general temporary assistance to focus on the backlog of appeals and to ensure that all cases remain current.

7. Currently there is no one person dedicated to the review function in the Administrative Law Unit; all Professional staff are expected to handle a number of cases at the same time and to prepare formal administrative reviews of decisions and responses to appeals as well as handling disciplinary cases and appearing before the Joint Appeals Board and the Joint Disciplinary Committee whenever hearings are scheduled. It would not be possible, therefore, to redeploy resources from that Unit without introducing new and substantial delays in appeals as well as in disciplinary cases and in the provision of advisory services. In addition, separation of the review function from the Unit to another office would result in a duplication of work as the facts of each case would have to be established and the legal issues understood and addressed at the review stage and then again at the litigation stage. There would not, therefore, be any decrease in the level of work that would have to be performed by the Unit. This duplication of work would require additional resources.

8. Should the General Assembly decide, however, that the review functions should no longer be discharged by the Administrative Law Unit, a decision would have to be made as to where these functions should be located in future. Options could include the Office of Legal Affairs or the Executive Office of the Secretary-General. Given the similarity in the functions performed by the Unit before the Joint Appeals Board and the functions performed by the Office of Legal Affairs before the Administrative Tribunal, placement of the functions in the Office of Legal Affairs would not address the Assembly's view that there is a conflict of interest when one office performs both the review and appeals functions. The conflict of interest issue would also arise if the review functions were placed in the Executive

Office of the Secretary-General, since the Secretary-General is the final authority on all administrative decisions.

## V. Conclusion

9. **In view of the substantive and resource considerations outlined above, it is the view of the Secretary-General that it would not be in the interests of the Organization to separate the functions of the Administrative Law Unit. The Secretary-General believes that the issues raised will also be reviewed in a systematic way by the redesign panel, with a view to preparing a comprehensive solution to ensure that the Organization has the most effective administration of justice system.**[3]

Notes

[1] Joint Appeals Boards are also established at the United Nations Offices at Geneva, Vienna and Nairobi to consider appeals submitted by staff members serving at those duty stations or administered by organizational units located at those duty stations.

[2] Resolution 59/266, sect. I, para. 2.

[3] The redesign panel will be established in accordance with General Assembly resolution 50/203, para. 49 (c).